

E-Filed 2/23/2010

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

CHAD RHODES,

Case Number C 06-5252 JF

Petitioner,

**ORDER¹ DENYING MOTION FOR
CERTIFICATE OF APPEALABILITY;
AND GRANTING MOTION TO
PROCEED ON APPEAL IN FORMA
PAUPERIS**

ROBERT KIRKLAND, Warden,

Respondent.

On January 19, 2010, this Court denied the petition for writ of habeas corpus sought by Petitioner Chad Rhodes (“Petitioner”) pursuant to 28 U.S.C. § 2254, and entered judgment for Respondent. On January 25, 2010, Petitioner filed a motion for a certificate of appealability. On January 26, 2010, Petitioner filed a motion to proceed on appeal *in forma pauperis*.

A petitioner may not appeal a final order in a federal habeas corpus proceeding without first obtaining a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A). A court may issue a certificate of appealability “only if the applicant has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). A certificate of appealability must indicate which

¹ This disposition is not designated for publication in the official reports.

1 specific issues satisfy this requirement. 28 U.S.C. § 2253(c)(3).

2 “Where a district court has rejected the constitutional claims on the merits, the showing
3 required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable
4 jurists would find the district court’s assessment of the constitutional claims debatable or
5 wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

6 This Court carefully considered the grounds for relief raised in the petition, and
7 concluded that Petitioner had failed to demonstrate a denial of a constitutional right. The Court
8 is not persuaded that reasonable jurists would find this conclusion debatable or wrong.
9 Accordingly, Petitioner’s motion for a certificate of appealability is DENIED.

10 Petitioner’s motion for leave to proceed on appeal *in forma pauperis* is GRANTED.

11 IT IS SO ORDERED.

12 The clerk shall forward to the court of appeals the case file with this order. *See* Fed. R.
13 App. P. 22(b).

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16 DATED: 2/23/2010

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19 JEREMY FOGEL
United States District Judge
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